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Washington, D.C. 20505

OCA 3229 - 88

4 October 1988

The Honorable Peter W. Rodino
Chairman
Committee on the Judiciary
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I have been advised by the DCI's Special Security Center that on 28 July 1988, the United States District Court for the District of Columbia issued its decision in the cases of National Federation of Federal Employees v. United States, et al., Civil Action No. 87-2284-OG, and American Federation of Government Employees v. Garfinkel, et al., Civil Action No. 87-2412-OG, which challenged the constitutionality and legality of Form 4193, the "Sensitive Compartmented Information Nondisclosure Agreement." Essentially, the decision upheld the Government's use of the Form 4193 as both constitutional and legal.

The Court has required the Government to clarify the scope of the term "classifiable" as used in the Form 4193 (and any equivalent SCI nondisclosure agreement) by defining the term in an appropriately limited manner and informing, within thirty (30) days, all current U.S. Government employees who have signed such agreements of this clarification. I have enclosed copies of this clarification for your convenience.

Please take the steps necessary to provide all of your current employees who have signed a Form 4193 (see enclosed list), or equivalent SCI nondisclosure agreement that contains the term "classifiable," with a copy or facsimile of the enclosed clarification no later than 22 October 1988 in order to comply with the Court's order.

For your information, the enforcement of all other aspects of the Form 4193 and equivalent SCI nondisclosure agreements is not affected by the notice requirement pertaining to the term "classifiable."

Sincerely,

[Redacted Signature Box]

John L. Helgeson
Director of Congressional Affairs

Enclosures

CLARIFICATION OF FORM 4193 AND EQUIVALENT
SCI NONDISCLOSURE AGREEMENTS

Please be advised that, in conformance with the order of the United States District Court for the District of Columbia, the following is substituted for the term "classifiable" in all Sensitive Compartmented Information (SCI) nondisclosure agreements containing that term:

". . . information that is unmarked classified information, including oral communications, and unclassified information that meets the standards for classification and is in the process of a classification determination . . ."

By making this substitution, the Director of Central Intelligence is clarifying that SCI nondisclosure agreements that contain the term "classifiable" do not cover currently unclassified information that may be subject to classification at some future date, but is not currently in the process of a classification determination. Therefore, the only circumstances under which a signatory might violate the terms of an SCI nondisclosure agreement by disclosing unclassified information are when a signatory knows, or reasonably should know, that such information is in the process of a classification determination and requires interim protection as provided in section 1.1(c) of Executive Order 12356 or any other statute or Executive order that requires interim protection for certain unclassified information while a classification determination is pending.

Thus, a signatory of an SCI nondisclosure agreement containing the word "classifiable" may be liable for disclosing information falling within the substituted phrase if:

(a) He or she knows that the unmarked information is classified, or meets the standards for classification and is in the process of a classification determination, whether the unauthorized disclosure is willful or negligent; or

(b) He or she should know that the unmarked information is classified, or meets the standards for classification and is in the process of a classification determination, in which case the unauthorized disclosure is negligent. In no instance could a signatory be liable for violating nondisclosure

provisions by disclosing unmarked information when, at the time of the disclosure, there was no basis to suggest, other than pure speculation, that the information was classified or in the process of a classification determination.

Through this notice, signatories to SCI nondisclosure agreements that contain the term "classifiable" are advised that their continued access to SCI will be governed by the SCI nondisclosure agreement they signed as it has been amended by this notice, without any further action.

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